

**Town of Milford
Zoning Board of Adjustment Minutes
September 17, 2015
Case #2015-15
Birdland Properties, LLC along with
HTD Associates, LLC
Special Exception**

Present: Zach Tripp
Fletcher Seagroves
Michael Thornton
Kevin Johnson
Joan Dargie

Excused: Kathy Bauer, Board of Selectmen Representative

Secretary: Peg Ouellette

The applicant, Birdland Properties, LLC along with HTD Associates, LLC the owner of Map 43, Lot 37, located at 38 Powers Street, in the Industrial District, is requesting a Variance from Article V, Section 5.06.1, to permit a multi-unit self-storage facility.

Minutes Approved on October 29, 2015

Motion to Approve: _____

Seconded: _____

Signed: _____

Date: _____

Zach Tripp, Chairman, opened the meeting by stating that the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures of the Board and stated that there were no new cases and two old cases on the agenda. Z. Tripp read the notice of hearing. The list of abutters was read. Abutters present were: Michael Ciardelli of 469 Nashua St. and a representative of the Board of Directors of Stoney Creek, 480 Nashua St.

Attorney Alex Buchanan appeared, representing Birdland Properties.

Z. Tripp, Chair, explained to the audience that the lot in question is in the I District and applicant is requesting storage units, not an approved use for that zone. He read the Industrial I District criteria from Sec. 5.06.0 of the Milford Zoning Ordinance. Applicant must show it meets requirements for variance to put these units on the lot in Industrial I. Board is not there to approve expansion of storage units, but to determine if it meets criteria for variance. Response from Community Development to his question re how lots would be handled was that lot line adjustment must be approved by Planning Board similarly to a minor subdivision. One lot would decrease and one would increase by same amount. It has to go before Planning Board.

A. Buchanan, representing Birdland, came forward. He asked that Ray Shea, an engineer, be allowed to describe the project.

R. Shea explained there are two properties involved. First property is on Powers St. on the west side of the plan where frontage is existing building; a 4.5 acre lot extends easterly. Second property is on James St, about 2.5 acres, 17,000 SF of existing storage. Proposal is to take common lot line and move to west to decrease Powers St to 2.5 acres and increase James St. to about 4.5 acres. On that 4.5 acre parcel will construct additional self storage units. Property generally slopes up to the west of the storage units – moderate grade to the lot line, then almost 20 percent slope and then levels off to existing building. The back parcel is more accessible from the lower area than from Power St. Proposal is for lot line adjustment first and then expansion of the self-service units.

Z. Tripp asked him to describe what the plan is for fencing, screening and lighting.

R. Shea said existing facility is on east side of the property. Building lighting and paving will be carried to the west. Buffer required in the Planning Board site plan development regulations –screening, berms, etc. Will work with Planning Board on what is required. Two acre lot to be transferred is wooded and heavily vegetated. Where existing buildings are there is lawn and existing buildings. Currently there are 17,000 SF existing storage units. Propose adding 19,000 SF.

Z. Tripp asked about entrance to the facility.

R. Shea said it would remain where existing storage is – no new access to the additional unit area.

Z. Tripp asked if they looked at access off Powers St.

R. Shea said it is fairly flat from Powers St. but area of proposed lot is a drop-off. Access is difficult from west of the existing facility it is fairly gentle 5 percent grade.

A. Buchanan asked R. Shea to describe map and zones.

R. Shea said to the north is industrial zone. To the south is residential. Powers St. is industrial zoned and on west side there is multi-family. South of the property are condominiums. There is one closer to Nashua St. Front has been zoned industrial for some years. That is why there are here.

A. Buchanan said zone to the east of the Industrial zone.

R. Shea said Limited Commercial, along to the south is residential.

A. Buchanan said activities in the area of Ciardelli Fuel predate zoning. Would probably not be allowed today but is grandfathered. They considered it to be buffer for the other and trying to do that for this also.

Z. Tripp asked for questions from the Board. There were none.

A. Buchanan said they have been down this road before, met the concerns brought up at that time. They know what ramifications were. He asked Mr. Ciardelli to address that.

Matt Ciardelli, representing Birdland, 467 Nashua St., wanted to give background and history on concerns raised. They have track record there. They have had no thefts and vandalism since property opened. No tenants that use it for anything other than storage. No businesses operated and no people residing there. Gate access has been successfully maintained from 7 a.m. to 9 p.m. Police patrol nightly. Daily traffic flow is estimated to be doubled existing. On average 5 to 10 visitors a day during week and twice that on weekends. People drop off stuff and then only come back when they move out – one in, one out. We average 4 turnovers a month on 140 units. Thirty-five percent of tenants live within one mile radius of facility. This goes to exemplify the need for the facility. Seventy percent have a Milford address and ninety percent have a Milford or Amherst address. In the past six months, they have been turning away over 100 tenants looking for storage in the same geographic area.

Z. Tripp asked if they had anything else to present.

A. Buchanan said none.

Z. Tripp asked for questions from the Board.

J. Dargie said current buildings look smaller than the proposed. Will they be the same height?

M. Ciardelli stated they haven't spent time on the layout because they want to go through zoning process first. The buildings will have same height, roofline and dimensional size for all units.

F. Seagroves asked about hours they will be open.

M. Ciardelli said they got conditional approval from 7 a.m. to 9 p.m.

J. Dargie asked about lighting.

M. Ciardelli said exterior lights – not floodlights, but on a timer until midnight or 1 a.m.

Z. Tripp wanted to read letters received and give the applicants a chance to respond and then open meeting for public comment. Any objections from the Board? None. He then read three letters: (paraphrased below)

1. Letter dated 9/15/15 from Abigail Wescott, #63 Building 3 at Stoney Creek. She is opposed to building storage units on Stoney Creek property line. Unnecessary disruption of the environment and will be devaluing owners' property unnecessarily.

2. Received 9/17/15 from Bernice. She opposes building of the storage units near Buildings 2 and 3 of Stoney Creek. She resides in Bldg. 3, Unit 5. Destroying natural buffer would be great diminishment to homes and values.

3. A pamphlet given to all Board members at the beginning of this public hearing, Crystal Jones, #16 Stoney Creek, listing 3 reasons for opposing: Trees produce oxygen, clean the soil, control noise & population, slow stormwater runoff, are carbon sinks, clean the air and act as windbreaks. Additional points: Demise of Milford. Three Reasons to Prohibit Construction Next to Stoney Creek Condominiums

1) Area not zoned for commercial construction; proposed construction trying to use a variance to get around the fact that the property next door to Stoney Creek was never meant for building storage units.

2) Decreasing value of Stoney Creek condos because of what is proposed to build next door; the current trees increase property values because they beautify the property and neighborhood. The current trees help increase value by 15 percent or more. 3) Removal of beautiful foliage. One of the reasons for choosing Stoney Creek was the beautiful view every autumn. Proposed variance will kill one of the best reasons for living here.

Proposed plan will not leave trees on the other side of the fence. There are three repercussions of that: lack of weather protection for trees on this side of the fence, promoting downed trees and property damage; and winter trees break the force of winter winds, lowering heating costs; shade from trees reduces need for air conditioning in summer. Studies have shown that areas of the cities without cooling shade from trees can literally be heat islands with temperatures as much as 12 degrees Fahrenheit higher than surrounding areas. Lack of screening for residents of Stoney Creek Condominiums. Everyday residents on one side will see tin roofs instead of beautiful foliage.

Environmental concerns –trees benefit Milford in many ways (Z. Tripp said he already listed those seven concerns).

4. Letter received during public hearing this evening dated 9/15/15 from Donna Palmer. She supports objection to the variance requested and lived at Stoney Creek since 1987. There has been considerable development in the area. In 2011 Birdland obtained variance for certain number of storage units in previously green field, tree-lined with stone walls. Now are mini-storage units, floodlights to make them useable at any hour of the night, and less trees, bushes and shrubbery which provide shade and protection from sweeping winter winds, and for the visual and additional impact of the neighboring oil company and their truck activity, the proposed expansion will further diminish quality of area and property values. Of great significance is lovely piece of wooded land would be destroyed, trees, stone walls, land will be excavated and replaced with pavement and rows of storage buildings reflecting the sun and surrounded by wire fencing. Presently this lane creates a healthier protected environment, not only more pleasing to the senses but truly more health-supporting natural system of cleaner air and noise control. Thank you for your consideration.

5. E-mail from Timothy Beaulieu received 9/2. He is owner of one of condominiums at Stoney Creek which overlooks the proposed construction site and expansion site of Eastern Self Storage. He attended the 8/20 meeting but was unable to attend the 9/3 meeting. He has spoken to several owners, tenants and neighbors. He listed several reasons for objecting to this exception: Property values at Stoney Creek have declined and adding a construction site and storage units will impact values, making it almost impossible to rent, sell or enjoy these properties during construction. Safety issues – Stoney Creek has residents of all ages; concern for elderly and young families. Current self-storage brings many people from outside of Milford into their residential area, resulting in increased traffic and vehicles turning around hastily in Stoney Creek parking lot. Additional units will increase non-resident traffic, opening up new dangers to residents. They have no idea who these people are or what exactly they are storing so close to homes. Contrary to Public Interest - A Google search shows there are 20+ storage facilities within 10 miles of 7 James St. and 12 within 5 miles, many right along 101A. None of the larger ones he has visited are next to homes. If Milford really needed more storage facilities, he would be for it to support the town. With roughly 15,000 people in Milford and ample storage facilities in the area, questions the need to expand an existing facility at expense of so many. Thank you for your time. I would be happy to discuss this with you further tomorrow if you have time. Signed by Tim Beaulieu, owner of 28 Milford St., Unit 32.

6. An e-mail received from Chris Krensky. He was present, said it was quite wordy so submitted it to Board without it being read.

7. Letter from Abigail Wescott, 73 Building 3, Stoney Creek opposed to the request. It would be greedy overuse of land which would devalue properties of owners of Stoney Creek condos.

Z. Tripp asked A Buchanan if he wished to address these comments.

A. Buchanan said re Z. Tripp's comments at the beginning of the hearing that proposal was to determine if they have shown adequate criteria for variance to allow self-storage. It is not question of whether that lot can or should be developed in any other way. They feel this is best. There are other uses allowed, but they believe those would be more detrimental to the neighbors who are concerned. One gentleman indicated that storage didn't make sense in residential area when only allowed use for self-storage in Milford is in residential zones.

Z. Tripp asked for questions or comments from the Board.

M. Thornton said one comment was that one of the readings didn't take into consideration the A through L acceptable uses of that land. It is going to be developed at some time – too valuable to just sit there. That's not the consideration. Consideration is whether this is good use.

Z. Tripp opened the meeting for public comment.

Daniel Muller of Cronin, Bisson & Zalinsky (law firm in Manchester) came forward on behalf of Stoney Creek Condominium Association. Takes small exception to way it is presented. Notion is they are focused on one lot. If they are focused on it as separate lot, they would be there for more than the use. It has no frontage and violates ordinance. They will be consolidated to one lot for all purposes, including land use. To say they are looking at separate lots and from legal standpoint is not proper or from factual standpoint. Other comments they are looking at whether this is a good use. That is not the question here. It is whether criteria are satisfied. Simply believing that it is good use doesn't mean it meets criteria which are set by statute and they have to satisfy all of them. First is public interest. In the application it says "(1) provide a buffer between a commercial and industrial operations and multifamily residences, (2) provide easily accessible storage availability to nearby single and multi-family residences and to this area of town." The second is irrelevant. Focus with public interest which is defined by zoning ordinance. There are particular uses allowed in this zone and one of the fundamental purposes is to segregate land according to uses. There is no suggestion that integration into industrial zone complies. It is variance creep. They got a variance in 2011 and now come back saying they got this and now want to move next door – we put it in this zone where it wasn't allowed and now want to destroy integrity of this zone in area that the Town has determined is not allowed there. Re buffer, one of the allowed uses in this district is agricultural. In terms of being a visual buffer, people would rather look at a field of corn than metal roofs. Existing is commercial expansion area is wooded. They are changing character of the neighborhood. From business standpoint they would like to do this – doesn't address public interest. Focus is on land, not the individual. One of the speakers indicated how well they have run it. It does run with the land. Once you grant it, it is there and goes forward with future owners.

Re spirit of the ordinance, town has set what uses are to be there. That's generally what's been made of that zone. The applicant is looking to destroy integrity of that zone with expansion. Respect to hardship, discussion about mixed uses. Hardship is characteristics of the land that distinguished it from other properties in the area. There are a mix of zoning districts and other uses, but that doesn't distinguish this property from others in the area. They cannot establish a hardship. Re hardship standards, the most restrictive one – since property already being used for industrial purposes can be no hardship under so-called "gray rocks" standard. In a New Hampton case, NH Supreme Court said just because you can't use entire piece is not a hardship. Re other more relaxed standard, so-called Simplex Standard, they need to demonstrate it is essentially no substantial relationship between use restriction in play and its application to this property. Industrial zone is being used for industrial purposes. To say that doesn't make sense with respect to this property turns things on their head. They are saying they should be allowed to use it and destroy integrity of the zone. Reasonable use – in 2011 variance representations were made as to the scope of the development and it was granted. Now looking at doubling size so it goes entire length of the back lot line so all they would see are self-storage units. Not a reasonable use. Fact they are not using all of the land doesn't change that. Fact that business and individuals purposes are buying this with restrictions on it is a created hardship. They presume to know restrictions but expanding one that is not allowed to another is not allowed. Re substantial justice, balance public and private interest. Public interest, this has been zoned industrial and kept industrial and for essentially private reasons they want to put it over and destroy integrity which conflicts with the zoning ordinance. Re diminishment of value, the Board heard complaints from landowners. These are higher buildings. They will have to look down. At end of the day, you have condos that will look out at self-storage units. When people move to Milford you are not looking for more urban setting. People want more urban feel to looking onto roofs, pavement, they can go to Nashua or Manchester. This looks onto woods now. This proposal limits that. Based on above, he is asking that they deny the variance.

A. Buchanan responded re use of destroying integrity of the zone. He doesn't think so by utilizing the property. That is all they are doing. Putting in permitted uses such a warehouse most of uses that could be used are not economically feasible because of the topography which makes it different from others

in neighborhood. For example, a manufacturing plant that would get into the part they want to use, would be difficult because of tiered lot. With manufacturing you don't want plant on two different levels. For those reasons most of the uses, while land could be used for them, not economically feasible. He's sure the Board will keep in mind that land owner has right to develop his property. Because there is already development doesn't limit his development. It makes economic sense to sell it and get economic value out of that, and it happens to be a compatible use next door – storage.

Z. Tripp commented to the Board they are evaluating this one lot. Make sure during discussion they are applying to that lot and his use on that lot, not taking into account the current facility. Focus on the lot in orange on the display. Any other comments from the public?

Michael McGowan of 28 James St., owner/occupant of Unit 34, said he will be looking out at self-storage. Everything heard from applicant is based on emotion and opportunity to make money. Nothing to do with people at Stoney Creek. He believes the number that Matt used was 140 units. Forty percent turnover last year?

Z. Tripp said four turn over a month.

M. McGowan said forty percent over the last twelve months.

M. Ciardelli said 90 trips in and trips out.

M. McGowan said he wasn't talking about that. He is talking about new occupants. Does anybody know what's in there? Any inspection?

Matt said they weren't discussing that.

M. McGowan said lots are zoned industrial, not what is being asked for. Should be denied because violation of spirit of zoning; that should sink the application. They don't need any more steel roofs to look at. They all do. People walk this property 24/7. They talk about buffer zone. What could be better buffer than what is there now? It is not their fault the owner has difficulty developing it due to it being costly because of a steep down grade. Coming off Powers St. there is a power line and high tension wire on other side which makes it not developable. This is not a buffer zone. Residents are asking to respect the spirit of the zoning. Please reject this.

Z. Tripp said one of the letters referred to fence. Is there currently a fence around the condos?

M. McGowan said no, there is a low stone wall – two walls which he pointed out on the lot plan.

J. Dargie asked, isn't there a fence around the condos?

M. McGowan said no fence.

K. Johnson started to say if Hitchiner were to build new casting facility on this lot

M. McGowan said he'd be all over it. Hitchiner has a sign-in for visitors and they know who is there. No accountability for who goes into these units. If they were going to use for intended purpose he would have nothing to say. They bought condo based on what was around them. They didn't have self-storage there. It was a field and broken down greenhouse. No field, no turn-in; they are losing what they went there for.

K. Johnson said they may lose that wooded lot anyway because there are legitimate uses. He wants people to understand they are not there to decide whether any development can take place, only the nature of the development that occurs on it.

M. McGowan said they know there are other applications that can go in there. He said every argument is based on emotion rather than factual law. This is the wish of the applicants. Residents are asking Board to protect them with the law.

Z. Tripp said it is currently a plan. It is an application to have the use. Because it is not listed, the law allows the avenue of a variance under the five criteria the attorney went through previously.

Derek Jones of #16 Stoney Creek, in the first building on the third floor, he does see existing units. Going to be a buffer for Ciardelli, but now it is a wooded lot. Occasionally he hears Birdland trucks but not a big issue. If you get rid of all trees and put up a building, that sound will affect him and others. It is

not zoned for it. If it was Powers St. company putting something in, he would not be there. He wouldn't like it, but they could do it. Opposes this application and hopes they deny it.

Lynn Austin, lives in the first building at Stoney Creek and was against the original construction. This will make it worse. She lives on second floor and has to look out at metal roofs and see lights shining on it, sometimes at midnight. Applicants say it closes at 9, which is generally true but she sees people with Ryder trucks there walking up and down the ramps at 3 a.m. The way the wind blows, all the noise, snowstorms, etc. blow in her direction. As was mentioned, pulling trees down will magnify it. Not only will it reduce value of the home, heating, and electric costs will increase because of no buffer. She realizes it was stated this was not a Planning Board issue but eventually it will get to that point. Their philosophy might be they already approved it, why not go a step further. She moved to Milford in 1989 because of rustic atmosphere. Applicants only want to make a profit – not create jobs – with very little effort on their part.

Jean Duffy of Stoney Creek, lives on the second floor and looks out on woods. She doesn't see there are a lot of storage facilities in Milford - sees them on the outskirts. What is percentage of all of those? Can't believe they are all full and they need more. Believes everyone in the room would not like to look out on metal roofs. People living at Stoney Creek are not wealthy. She moved here because it was rustic. What is percentage of those storage units being full all around? She doesn't see them in middle of houses.

M. Ciardelli said in the whole area it is 90 to 95 percent occupancy.

Z. Tripp asked saying in general area it is 95 percent full?

L. Austin asked why they aren't more people building them?

Z. Tripp said in their deliberations they cannot take into account business impact. Doesn't matter what they make. It is whether they meet the criteria of the variance. If it was not needed and all storage units were empty and they wanted to build ten more, the board couldn't take that into consideration.

J. Duffy said consider Stoney Creek's feelings.

F. Seagroves commented on his experience when he helped someone move recently from a ten-room house and rented one of the storage units. They had to go to Old Cemetery Rd. and rent another and into Amherst to rent another. There is a shortage.

K. Johnson commented there are a lot of comments – and they understand – they like trees. But issue is not salvaging those trees. Owner has right to develop it in certain ways. Whether this month or next year, those trees could be gone. Keep in mind they cannot say they will preserve those trees because they are not. If they want to preserve them, make an offer for the property. Board is there to determine what is appropriate to be on the property, whether looking out on tin roofs or storage units, or a research and development company that could be put in there and wouldn't need permission. There are specific things the Board needs look at, whether that unit fits where they are proposing – not can anything go there, but can these units go there within the bounds of the law.

D. Muller responded: 1. If you did go to develop it they would not just go to Planning Board would have to present site plan. One of the site plan reviews is how you make it fit within the surrounding uses. There is speculation and presumption that the Planning Board is not in position to make.

Christine Kelly Rose, 28 James St. Unit 6 came forward. She was offended by F. Seagroves' comments because his friend was looking that it automatically goes in.

F. Seagroves said he had not said that.

Christine Kelly Rose said the lot is not sited for this. Now they are looking to transfer that to this. She's asking Board not to allow. She said "we vote you in" and is asking as their representation and their lawyer saying what they are offering is wrong. Just because owner cannot develop it, sell it, and make that into this, he gets it. That owner is not making property saleable. They don't get right to move over. Go by the law. You represent us. Find us the right thing to go in there.

Z. Tripp commented the ZBA doesn't take into account they are expanding current use. Application is whether or not storage lots on this lot meet criteria. They are not voted. They are all volunteers. He encouraged people to volunteer for the Board.

K. Johnson also encouraged people to volunteer. He said they are bound by state law. When zoning ordinance was created the US Supreme Court ruled there has been a Board of Adjustment to grant relief for what makes it onerous for property owner to live on his property the way it is. There are five criteria to be met. That is why they are there. How does applicant feel he meets the criteria? Based on that and on testimony of the public and knowledge of the Board, if they feel he meets the criteria, they will grant the variance. They must meet all five. If Michael, Joan and he don't think he meets one or other they must vote no. They take public evidence into consideration in deliberating.

Sue Ingraham, Building 2, 28 James St., said one of the other residents was asked if it would be okay if Hitchiner was there because they don't use trees as an argument because they will go one way or the other. She understands he was trying to clarify they have to say how proposal fits into the requirements for variance. Attorney said the current owner felt it wasn't economically feasible to sell to another industrial developer because of the grade and overcoming challenges to make it feasible would be costly. She doesn't understand if they are talking about economic hardship not being able to develop the land –and it was explained it doesn't have anything to do with storage units making money. Does it have to do with need of storage units?

Z. Tripp said no.

Sue Ingram continues, if they are worrying about current owners' economic feasibility; understand that at least thirty percent of owners are investors so it is economically necessary for them to be able to rent their unit. Right now there are people looking to be able to. It was desirable for her to buy eight years ago. It was hard to downsize from her home; what sold her was only three windows, one of which was looking out to trees. Person selling to her said it was to their economic advantage to have an attractive condo based on surroundings. That is why she bought it. If an investor there rents out or if she is going to sell, it is totally changed. Not based on some of the land with Hitchiner or anyone else. It can affect all of the residents as well.

M. McGowan said re his comment re Hitchiner the property is used for what it is zoned for they would be talking to the Planning Board, review the site plan and offering commentary. That is off the plan – nothing to do with what they are doing here.

K. Johnson said his concern that many of the comments have been that there are trees there now. If it were in his power he would prefer every development surrounded by trees. Not going to happen. His point is there are many uses that would remove those trees. The speaker's point is valid. They would be at the Planning Board looking at site plan etc. Make sure that everyone understands they cannot look at it from standpoint that they want to preserve trees. They look at ordinance requirements for the variance and how to they fit together.

M. McGowan said K. Johnson covered it.

Resident of 28 James St., Unit 64 (who submitted a letter earlier) said the inability of current owner of the property to develop it within the current zoning is the reason this variance is being sought. Granting of the expansion by the board would benefit the petitioners potentially at the expense of the abutters. Argument that it is inevitable that property would be developed within current use seems highly speculative. Why is it being developed along those lines now? Cost was mentioned. His concern is that the salability of the place he bought will be impacted by the aims of the abutters to profit. Win for one is a loss for others.

Mike Ciardelli has mixed feelings about project. He sympathizes with owners next door that are looking on pavement and metal roofs. He lived at that property his whole life. It was his back yard. When a building went up he felt like the abutters; everything changed. Have to realize that property will change sooner or later. They need to give serious thought they may end up there will be a lot worse than what

is being proposed. He understands impact on property and on view but that is what they make curtains and shades for.

Garrett Jones, re previous statement that things always change is correct, but basing decision on fear and potential should not be taken into consideration.

Christine Kelly Rose 28 James St. Unit 26 – to Mike Ciardelli’s comment – he owned the field before it became Stoney Creek. Somebody else developed it but families moved in. They are asking for a variance for something that is not allowed and they are asking Board to focus on fact that people don’t want these for neighbors. May be developed, may not, but they can’t focus on maybe because the current owner can’t find anybody else to buy it. He has to be able to show that the variance is a hardship. Doesn’t see any hardship that with this number of units they snuck in there and they want to double it.

M. McGowan asked if there was a right of way off Powers St. to the property. He doesn’t believe so.

A. Buchanan said they don’t need one. The right of way is the orange portion (on the display map) because it is part of the existing lot – adjacent lot owned by HDC.

M. McGowan said to develop that lot is the only one that could do it. Only way it could be developed they are going to be able to join lots.

K. Johnson said it is not separate lot. It is all one property.

Z. Tripp said orange part is HDC Associates lot on the map is all one lot.

M. McGowan said no easy access to complex. Unlikely anybody would come in and develop.

K. Johnson said or company expands - many ways around it.

M. McGowan said orange part is undevelopable without huge expense.

K. Johnson said it is partially developed.

M. McGowan said orange portion is undeveloped.

Matt Ciardelli said in 1957 one house on the street. They are there as friends and neighbors, not to force something down their throats. Ciardelli is looking to expand. They are hoping to provide buffer and talk to owners on those lots. They already have a purchase and sale agreement. They could move all operation over there with oil trucks and tanks. They are talking about landowner’s right to use his land. Owner has right to sell it to them.

Bob Kokko, own at Stoney Creek and Manager of the complex, spoke. Heard comments from Board re need for something like this and fact that this might be lesser of some other evil. That may be so, but none of these are for consideration of the Board. Hopes they don’t interfere with their decision because this might be better than some other thing that might come down the road. It is wonderful the applicant has found investment like this. As investor, it is working out for them. It is a zoning issue. Milford has zoning laws and there are legitimate cases where hardship comes into play and it makes sense. First time it was 3 to 2 vote (for the original units). Hardship probably could have been contested – arbitrary. Now looking at the middle lot and as an owner and manager for the complex they have to explain the case as best they can in opposition, just as applicant would do if they owned a building in one of those across from their home. One thing Planning Board should consider is at what point under some of those criteria that it becomes devaluation of property? There are condos in \$300K range and they oppose, Stoney Creek opposes and they are in \$100K range. At what point do you open your eyes and say zoning doesn’t allow it and now you can’t put it in front of a \$500K home. Would they think differently if it was a \$500K home? They are still personal residences and have value and people concerned when does variance issue end? If property was surrounded by available property and people kept coming in asking for variance, and because of previous variance they could say this was allowed and I should be able to use my property the way they are. When does this chain reaction end? Could they surround the whole property because ZBA keeps granting variances? There is no possible buffer to protect three-story buildings from visual.

Z. Tripp had two comments – Board would not speculate what lot could be used for in future. Re lesser evil, reason for those comments because it is currently industrial and current approved use and

application is use currently not allowed. By definition they are comparing requested use vs. allowed uses. Not saving you from a future use. Have to compare it to what is in that District currently.

Re expansion of variance comment – they have to handle each case and each lot individually. Looking at this lot they take account of what is around it. Not why it is there or how it got there. It was taken into consideration with the first lot, what was around that. Have to take each lot individually.

D. Muller – re last comment about why they got there – thought there was a case re Walker v. Manchester where they did talk about variance creep. Knows they look into each individually but if you keep doing this it changes the character of the area and does lead to more variances

K. Johnson said there was also the Lakeside property that wanted to put up a new boiler and they said the Board should consider what would happen if everyone applied for one. There is that precedence issue.

There being no other comments, Z. Tripp closed the public portion of the meeting.

Before reading the application, A. Buchanan, re the criteria of diminishment of value, he gave a letter to the Board from a NH appraiser, John K Rizzi, Certified General Appraiser of Souhegan Valley Valuations, LLC, Wilton, NH. Mr. Rizzi's conclusions are on page 4. (Letter states on page 4 that " As can be seen, while there are variations from year to year, average sales prices at all three condominium developments responded similarly to market conditions over the indicated period of time. It does not appear that the presence of the Birdland self-storage facility adversely impacted prices at "Nottingham Place" and, accordingly, it seems unlikely that an expansion of the facility would adversely impact prices at Stoney Creek Condominium.

J. Dargie asked if trees are owned by Stoney Creek. There are some trees on Stoney Creek property. What is amount of buffer on his side?

A. Buchanan said none.

J. Dargie asked if, on the other side, they were going right up to the 15 ft. buffer.

M. Ciardelli said no.

J. Dargie said looks like they are in the center. Maybe could be pushed away from condos and give them a buffer.

Audience member asked minimum of the buffer?

K. Johnson referred to 10.2.4, Storage Regulations, page 235 of ordinance, "minimum fifteen (15) feet perimeter landscaped buffer along all sides of the parcel. This buffer shall be planted and maintained with evergreen trees, minimum six (6) feet in height, at intervals fifteen (15) feet on-center, alternately staggered along the length of the buffers. The type of evergreen tree shall be subject to the approval of the Planning Board."

A. Buchanan read the application into the record. (additional comments in parentheses)

1. Granting the variance would not be contrary to the public interest because:

Public interest would be served because this use would (1) provide a buffer between a commercial and industrial operations and multifamily residences, (2) provide easily accessible storage availability to nearby single and multifamily residences and to this area of town. (In addition, in order to be contrary to public interest the variance must unduly and to a marked degree conflict with the ordinance such that it violates an ordinance's basic objective. In determining what the ordinance's basic objective if there isn't one, is you look at whether the variance, if granted, would alter the essential character of the locality or threaten public health, safety and welfare. They don't believe this use would do any of those things whatsoever. Considering the multiple uses in the neighborhood you would be hard pressed to find that it would change the essential character of the neighborhood and the locality by the addition of self-storage units, particularly in a case where we have self-storage units in that area and have the benefit of seeing how they have affected that neighborhood.

2. If the Variance were granted, the spirit of the ordinance would be observed because:

This use is similar to other users allowed this zone. The spirit and intent of the ordinance is to promote orderly growth and the appropriate use of land. Considering all of the competing uses surrounding the subject site, the Board's approval of this request will accomplish just that: promote the orderly growth and appropriate use of land. This is clearly evident when considering the successful operation of the existing storage facility amongst all the competing uses surrounding it.

3. Granting the variance would do substantial justice because:

It would allow the owner to develop its property in a reasonable manner with no negative impact on abutters and the surrounding neighborhood.

4. Granting the proposal would not diminish the value of surrounding properties because:

The proposed use is compatible with other uses in its District as a commercial activity next to an oil distribution facility and industrial activities. Because it is consistent with existing uses, the values of surrounding property will not be diminished by the addition of this more consistent and compatible use with those around it.

There is no evidence that self-storage facilities have diminished values in the neighborhood. It is not likely that the addition of the proposed units would suddenly result in reducing property values. (That was the conclusion of Mr. Rizzi in his analysis of sales affecting nearby)

5. Denial of the variance would result in unnecessary hardship.

A). Owing to special conditions of the property that distinguish it from other properties in the area:

i). No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property because:

This property is different from others in the area because it is undeveloped, it is surrounded by a myriad of competing uses and it abuts a compatible self-storage facility. All of its abutting properties except to the north are developed with a variety of uses from single and multi-family residences to commercial retail operations, to fuel oil storage and industrial warehousing and manufacturing. Further, this property is located in the Industrial District and abuts two different zoning districts, Residential B to the South and Limited Business Commercial District to the east. It has the unique characteristic of being able to serve as a buffer between these competing zoning districts.

The second prong of this test is there must be no connection between the "general public purposes" of the ordinance in restricting self-storage units in this zone. The ordinance itself is silent as to the general public purposes of restricting this use in the Industrial District. Accordingly the general purposes of the Ordinance should then be reviewed. Section 1.01.0 of the Milford Zoning Ordinance states that "[t]he regulations... are for the purpose of promoting the public health, safety, morals, general welfare and civil rights of the inhabitants of the Town of Milford..." It is difficult to understand that allowing this site, situated among such a variety of other uses, to be used as a self-storage would somehow be a threat or damaging to the health, safety and general welfare of the citizens of Milford.

ii) and; The proposed use is a reasonable one because:

It is relatively benign and less intense in comparison to most of the other uses surrounding it. Further, it would serve as a buffer between these uses, that other permitted uses in the Industrial District cannot provide.

As discussed below these uses simply cannot provide the buffer that the proposed use can.

B) If the criteria in Section (A) are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property because:

As indicated above, this parcel of two acres is located among several zoning districts and their varying uses. As such, it is unique because it can be utilized as a buffer among these competing uses. Further, this parcel is not conducive to the permitted uses in its zoning district, and as required “cannot be reasonably used in strict conformance with the ordinance.”

The following uses are allowed in the Industrial District (5.06.0):

- A. Harvesting of Natural Resources
- B. Manufacturing (from Light Manufacturing)
- C. Offices
- D. Research and Development
- E. Distributive and Mailing Facilities
- F. Processing and Warehouse
- G. Telecommunication Facilities
- H. Farm Roadside Stands
- I. Processing
- J. Newspaper and Job Printing
- K. Agriculture and Farming
- L. Utility, Public or Private

None of these uses would be appropriate for this site due either to its size or proximity to many different uses. Due to its proximity to the fuel storage facility to the Northeast it is unsuitable for most of the uses allowed. The owners and/occupants of these facilities would not want to be subject to the noise, lighting and occasional odor emanating from the site to the Northeast. This is true of the enumerated uses A-L above. Using the parcel for permitted uses in light of the current industrial use to the east would create an overly intensive industrial operation that would not be welcomed by industrial users of either portion of the lot.

Z. Tripp said application stated only current use is self storage use in Residential R District by special exception. Is it true that current proposal as drawn, is that lot in conformance with a Residential R. Lot.

A. Buchanan not sure what he meant.

Z. Tripp asked if it was at least 2 acres in size. Right now structures are set back.

A. Buchanan said it was at least 2 acres. The structures are not set.

K. Johnson said he has presented a sketch that is what is proposed. That is what Zoning Board has to go by.

A. Buchanan respectfully disagreed, said that is a conceptual plan. They are bound by what Planning Board tells them.

J. Dargie said part of what Zoning Board can do is approve based on conditions. If they don't have what they are really proposing then how can they approve. They could make general conditions and they would have to make the plan match them.

A. Buchanan said they expect them to build a 30 x 100 ft. building, which is what are represented and do it within normal site review plan and the special exception review that is necessary for self-storage and meet all buffer requirements, including screening. They will do what the Planning Board wants.

Z Tripp asked for any further questions from the Board. There were none.

The Board proceeded to discussion of the criteria.

1. The variance will not be contrary to the public interest.

F. Seagroves – yes. According to the Handbook, it talks about demonstrate the public benefit if granted but merely must show no harm to the public. Doesn't see any harm.

K. Johnson also read from the Handbook – as related to this criteria granting would not be contrary to public interest “to be contrary to the public interest it must alter the essential character of the neighborhood or threaten the health, safety, or general welfare of the public.” He doesn't think granting it would be contrary to the public interest under those parameters.

M. Thornton – within the parameters listed for them to consider, can't see any way it is contrary to public interest.

J. Dargie – doesn't see how it would be contrary to public interest.

Z. Tripp agreed with Board it won't be contrary to public interest. Will not do harm to the public or alter essential character of the neighborhood. Most of neighborhood is industrial to the north/northwest and limited commercial to the northeast and to the south one residential lot. Vast majority of the neighborhood is already residential. Unfortunately it is on border of transition so both industrial and residential, but doesn't think it will alter essential character.

2. The spirit of the ordinance will be observed.

M. Thornton believes spirit of the ordinance would be observed. Spirit of the ordinance is to promote orderly growth. Believes this is orderly and benign compared to what could be there.

J. Dargie – spirit of the ordinance would be observed. Variance is to allow a use that is accepted but similar to others.

F. Seagroves – yes. Handbook talks about health, safety, general welfare of the community – safety of streets, etc. He doesn't see any of that. Wanted to comment it will have a fence around it where right now there is not one. Will be locked from 9 p.m. to 7 a.m. and doesn't see any safety concern.

K. Johnson – Doesn't think it could be granted without violating the spirit of the Ordinance for a number of reasons. The Industrial I District was put into place in 1995 in which majority of the uses there were defined. Self-storage was added to the Residence R District in 1997. Obviously the Planning Board was aware of the existing uses. Even though applicant said it was similar to warehousing, etc. Planning Board must have been aware of that. It is not just generally allowed in the Res. R District they have specifically limited it to specific areas within that District. That indicates intent was to place strict limits on how and where self-storage could be placed.

Z. Tripp – Industrial R is for manufacturing, processing, assembling, research and development. Spirit of the ordinance in this lot and this zone includes warehouse which is similar to the self-storage. This use is in spirit of that zone that this lot is in wouldn't threaten health, safety and general welfare of the community.

3. Substantial justice is done.

K. Johnson – no – granting would not do substantial justice. This is more difficult of the criteria to define. Only guiding rule is that loss to the individual not outweighed by gain to the public is injustice. Gain to the general public of limiting where self-storage units could be placed in town vs. loss of this one potential use of the land vs. other legal granted uses there could be that loss is not outweighed by potential gain to the public.

F. Seagroves - yes. First they can build a warehouse; they are almost the same in his opinion. Loss to the individual is not outweighed by gain to the public interest. He added that when he made his comment re demand for these, the applicant did state figures as to number of open units. He was just going over what applicant had said and what he himself found out from someone else. He was just verifying that what applicant said was correct. He wanted to make that clear.

M. Thornton – would not be because if you look at warehouse with trucks coming and going all hours of the day. He was a warehouseman and knows how they operate. Not quiet, messy operation. Self-storage is much more benign. Substantial would be done.

J. Dargie – looking at other uses that could be used on the property that she feels are similar to self-storage it would do substantial justice to allow.

Z. Tripp this is tricky to answer. Believes they can grant and do substantial justice. What would loss to the owner be? He would not be able to develop in this manner as testified because of the shape of the lot and how difficult it is to develop the back of the lot as it is. If they say no to substantial justice, there has to be a gain to the public that is more than that loss. It may be short term gain to public keeping the trees there. But they have to answer the question that public would gain by having that Industrial I lot remain industrial. Not sure public would have anything to gain.

4. The values of surrounding properties are not diminished.

M. Thornton – doesn't believe they would be. There is feeling they would be, but with buffer even though they would be looking down on the property, the use is more benign than others with more intensive effect on the community

J. Dargie – doesn't think it would diminish value of the property. She went and looked at the storage units and the landscaping is done nicely. All of the Ciardelli properties are all done with thought to the neighborhood. It would not be in their interest to cause values in the neighborhood to go down. As long as that is maintained, in looking other storage facilities in town, this is nicest storage facility in town. Doesn't see how value of abutting properties would be diminished.

K. Johnson – agrees that granting would not diminish value of surrounding property. While there is perception that it would have negative impact, evidence presented to them in many other cases in this locale and others where they have been they found that the existence of self storage had no effect.

F. Seagroves agreed. They have information from appraiser. Agrees it will not degrade property value although people would think so because of loss of trees. But that is not speaking to the value of the property.

Z. Tripp –believes they can grant this variance without diminishing value of surrounding property. Question is if granting this unapproved use in this Res. R District would diminish other surrounding properties. Obviously they are talking about the condos. Doesn't think self storage would be impacted. This is a transitional zone lot which makes it difficult. Are they going to approve a use that will diminish property more than approved uses in Industrial I. This is lower impact than already approved. Compared to what is allowed there, not diminishing value any more than currently allowed uses. As Kevin mentioned, the lot size is concurrent with Res. R. If this gets approved, he would encourage applicant to take surrounding properties into consideration and feels Planning Board will do that also regarding screening and buffers.

5. A. Owing to the special conditions of the property that distinguish it from other properties in the area, denial of the Variance would result in unnecessary hardship because:

- i. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property; and**
- ii Use is a reasonable one.**

B. If the criteria in Paragraph A are not established, an unnecessary hardship will be deemed to exist if, and only if, owing to special conditions of the property that distinguish from other properties in the area, the property cannot be reasonably used in strict conformance with the ordinance. A variance is therefore necessary to enable a reasonable use of the property.

K. Johnson read from statute, 674 33 5A (emphasis added by K. Johnson) “for the purposes of this Paragraph unnecessary hardship means that owing to **special conditions of the property** that distinguish **it** from other property in the area no fair and substantial relationship exists between the general purposes of the ordinance and the specific application to the provision of the property.” He sees nothing that makes this property unique, especially because it is in an industrial area and is already being used for industrial use. In the application, applicant put “second prong of the test is there must be no connection between the ‘general public purposes’ of the ordinance in restricting self-storage units in this zone. The ordinance itself is silent as to the general public purposes of restricting this use in the Industrial District.” Ordinance is also silent

on restricting health facilities, schools, bed & breakfasts, churches, funeral homes, etc. Ordinance doesn't list every potential use we don't want in it. Not only are self-storage only allowed in Residential R, but allowed only in specific areas of Residential R. That is a clear enough defining of purposes of not including them in Industrial in Industrial, Industrial/Commercial Residential R or any other area around the property. Re b, he sees nothing special to distinguish the property for a, he sees nothing to distinguish it for b.

F. Seagroves – re propose use is reasonable. Feels it is reasonable because they are Res. District warehousing is very similar to storage sheds. It is hardship because storage sheds are not allowed in Industrial District. He asked Chair to come back to him re fair and substantial relationship.

J. Dargie – re no fair and substantial relationship, she doesn't see storage units being that different from what else is around the area. Doesn't think anything distinguishes that from the others. And, it is a reasonable use because it is very similar to those allowed in the Industrial District.

M. Thornton – proposed use is reasonable. It is relatively benign use compared to warehouse, factory, and other uses that could be – agricultural and farming, harvesting natural resources, i.e. a saw mill. Self storage is benign. Re I, doesn't see substantial relationship between the ordinance and specific application of the property because this property is different. It is self-contained, already functioning as self-storage unit, and he doesn't believe surrounding area would be hurt by continuing use. Doesn't see any special conditions distinguishing it from other property in the area and doesn't see any benefit of denial.

F. Seagroves, agreed with M. Thornton. No special conditions that distinguish it from others in the area. It will be similar to everything else in the area.

Z. Tripp – proposed use is reasonable one. The applicant asking to put self-storage in Industrial zone is a reasonable use. It has a lesser impact than the approved uses. Doesn't think it will diminish surrounding properties. Re fair and substantial relationship, restrict the use only to define industrial uses does not promote valid public purpose when proposed use is very similar to allowed uses which is warehousing. Can grant without frustrating purpose of the ordinance.

Re special a condition of the property, in first looking at it, property is deep industrial lot, wider at the street and you can see existing buildings took up that footprint and you have that back lot. Both applicants testified the lot drops off behind the building and a member of the public testified it would be difficult to expand the current use. The drop off making it difficult to expand would be a special condition.

K. Johnson said both Mike and Fletcher said there was nothing unique about the property and therefore the variance should be granted. If there is nothing unique about this property it should be denied.

M. Thornton said he was trying to say that because the denial of the application would create an unnecessary hardship. What makes it unique is the topography in the area and the adjacent self-storage units.

F. Seagroves said looking at it now, as M. Thornton said, to get to that piece of property you would have to go down that grade. The special conditions are it is going to be a lot which will be hard to access and would be landlocked.

J. Dargie said they put conditions on the self-storage last time; do they want to put same conditions on this property, if approved? One would be restrict operating hours from 7 a.m. to 9 p.m.

Z. Tripp asked if she wanted to make a motion.

J. Dargie said yes.

M. Thornton said in view of comments about a 3 a.m. unloading; that is unacceptable. There should be a chain across the gate – some way to prohibit entry between prohibited hours.

J. Dargie they could add that. Only other things, he's not sure it is appropriate here or Planning Board Re placement, if approved, what united could be placed as far away as possible.

K. Johnson said that ZBA can't do that.

J. Dargie made motion to limit operating hours from 7 a.m. to 9 p.m., with entrance being gated, with no access after 9 p.m.

M. Thornton seconded the motion.

VOTE on Motion: J. Dargie – yes; M. Thornton – yes; K. Johnson – abstained; F. Seagroves – yes; Z. Tripp – yes

Motion passed 4 yes, one abstention.

Vote on criteria:

1. Would granting the variance not be contrary to public interest?

F. Seagroves – yes; M. Thornton – yes; J. Dargie – yes; K. Johnson – yes; Zach Tripp – yes

2. Could the variance be granted without violating the spirit of the ordinance?

M. Thornton – yes; J. Dargie – yes; K. Johnson – no; F. Seagroves – yes; Zach Tripp – yes

3. Would granting the variance do substantial justice?

J. Dargie – yes; K. Johnson – no; F. Seagroves – yes; M. Thornton – yes; Z. Tripp – yes

4. Could the variance be granted without diminishing the value of surrounding property?

K. Johnson – yes; F. Seagroves – yes; M. Thornton – yes; J. Dargie – yes; Z. Tripp – yes

5. Would denial of the variance result in unnecessary hardship?

F. Seagroves – yes; M. Thornton – yes; J. Dargie – yes; K. Johnson – no; Z. Tripp – yes

Z. Tripp asked for a motion to approve Case #2015-15

J. Dargie made a motion to approve.

M. Thornton seconded.

Final Vote:

J. Dargie – yes

M. Thornton – yes

F. Seagroves – yes

K. Johnson – no

Z. Tripp – yes

Case #2015-15 approved by 4 to 1 vote.

Z. Tripp informed applicants they were approved and reminded them of the 30-day appeal period.